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December 19, 2016

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Filed by ECF and Faxed to Chambers (212) 805-7927

The Honorable Naomi Reice Buchwald
United States District Judge
Daniel Patrick Moynihan U.S. Courthouse
500 Pearl Street
New York, NY 10007-1312

*Re: Siemens Aktiengesellschaft v. Sunfrog,
LLC; 1:16-cv-08411 (NRB) (BCM); Our Ref: 224754.*

Dear Judge Buchwald:

We represent the plaintiff Siemens Aktiengesellschaft ("Siemens AG"). We are responding to the letter to you that defendant's counsel filed by ECF on December 16, 2016, in which he requests a pre-motion conference to seek leave to file a motion to dismiss the Complaint.

Defendant appears to be seeking permission to move to dismiss pursuant to Fed. R. Civ. P. 12(b)(6). There is, however, no basis for such a motion. For example, Defendant states that "Plaintiff has failed to specifically identify the mark(s) that it believes have been infringed." However, paragraph 16 of Complaint identifies the registration numbers for the SIEMENS trademark, and paragraph 21 states that "[t]he defendant Sunfrog's offering of garments bearing the infringing designation 'Siemens' ... constitutes trademark infringement".

The second and third purported grounds for dismissal in Defendant's letter are that the "Defendant has not used Plaintiff's alleged mark as a trademark" and that "Defendant's use of Plaintiff's mark is allowed under the doctrine of fair use". The attached screenshot from the Defendant's website shows

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that it is continuing to offer products for sale that infringe and dilute the SIEMENS trademark. No fair use exception applies to this commercial offering.

Finally, the Defendant's letter states that, with regard to Siemens' fifth claim for *prima facie* tort, "Siemens has not adequately pled special damages." The Complaint alleges that the Defendant is "deliberately attempting to confuse the public concerning the source, origin, and/or sponsorship of garments sold on its website", e.g., paragraph 9. This confusion necessarily results in the loss of customers, i.e., special damages.

Although Defendant's contemplated motion has no merit we have no objection to a pre-motion conference. We ask, however, that due to our limited availability during the upcoming holiday season the conference not be scheduled until after the first week in January.

Respectfully,



Michael Aschen

MA:zs

attachment

cc: Siemens Aktiengesellschaft

Lawrence E. Abelman, Esq.

⚠ Delivery Time Notice Estimated delivery for domestic orders placed today is December 24-29

SEARCH RESULTS FOR: "Siemens"

Sort by Most Popular



I Can't Keep Calm Im...



Its a SIEMENS Thing...



No, Im Not Superhero



SIEMENS



SIEMENS



A9437 SIEMENS -...



TEAM SIEMENS...



SIEMENS



I Can't Keep Calm Im...



Its a SIEMENS thing.



Its a SIEMENS Thing

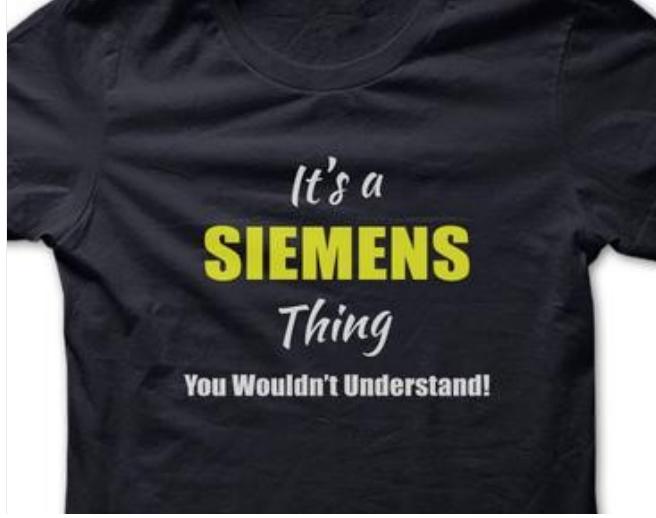


Its A SIEMENS thing,





I Cant Keep Calm Im...



Its a SIEMENS Thing...



Kiss me im a SIEMENS



its A SIEMENS Thing...



SIEMENS - I may be

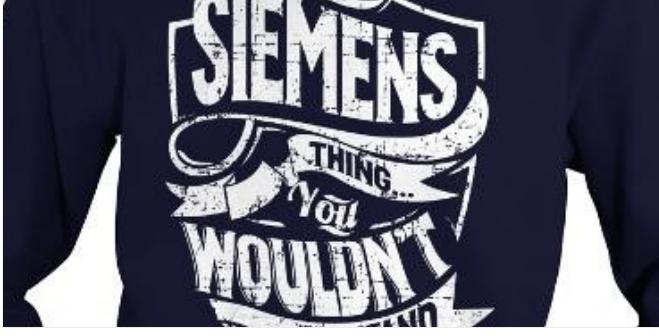


funny SIEMENS Rule...





SIEMENS - Kiss Me...



It's a SIEMENS Thing,



Never Underestimate...



SIEMENS Last Name,...



SIEMENS-the-awesome



SIEMENS-the-awesome





[Tees4u] - Team...



SIEMENS



Keep calm and drink...

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